

1 CENTER FOR DISABILITY ACCESS
2 Ray Ballister, Jr., Esq., SBN 111282
3 Mark Potter, Esq., SBN 166317
4 Phyl Grace, Esq., SBN 171771
5 Dennis Price, SBN 279082
6 Mail: PO Box 262490
7 San Diego, CA 92196-2490
8 Delivery: 9845 Erma Road, Suite 300
9 San Diego, CA 92131
10 (858) 375-7385; (888) 422-5191 fax
11 phylg@potterhandy.com

12 Attorneys for Plaintiffs

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 **Daniel Lopez,**

17 Plaintiff,

v.

18 **Salisbury Family Limited
19 Partnership**, a California Limited
20 Partnership;
21 **El Cholo, Inc** and Does 1-10,

22 Defendants.

23 **Case No.**

24 **Complaint For Damages And
Injunctive Relief For Violations Of:
American's With Disabilities Act;
Unruh Civil Rights Act**

25 Plaintiff Daniel Lopez complains of Defendants Consuelo Duran; Jose
26 Duran; Arturo Duran; Jose Hernandez; and Does 1-10 ("Defendants") and alleges
27 as follows:

28 **PARTIES:**

- 29 1. Plaintiff is a California resident with physical disabilities. He is a paraplegic
30 who cannot walk and who uses a wheelchair for mobility.
- 31 2. Defendant Salisbury Family Limited Partnership a California Limited
32 Partnership, owned the property located at or about 1121 Southwestern Ave Los
33 Angeles, CA 90006, California, in May, 2015.

1 3. Defendant Salisbury Family Limited Partnership a California Limited
2 Partnership, owned the property located at or about 1121 Southwestern Ave Los
3 Angeles, CA 90006, California, currently.

4 4. Defendant El Cholo, Inc owned the El Cholo Restaurant (“El Cholo”) located
5 at or about 1121 Southwestern Ave Los Angeles, CA 90006, California, in May
6 2015.

7 5. Defendant El Cholo, Inc owned the El Cholo Restaurant (“El Cholo”) located
8 at or about 1121 Southwestern Ave Los Angeles, CA 90006, California, currently.

9 6. Plaintiff does not know the true names of Defendants, their business
10 capacities, their ownership connection to the property and business, or their relative
11 responsibilities in causing the access violations herein complained of, and alleges a
12 joint venture and common enterprise by all such Defendants. Plaintiff is informed
13 and believes that each of the Defendants herein, including Does 1 through 10,
14 inclusive, is responsible in some capacity for the events herein alleged, or is a
15 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend
16 when the true names, capacities, connections, and responsibilities of the
17 Defendants and Does 1 through 10, inclusive, are ascertained.

18

19 **JURISDICTION & VENUE:**

20 7. This Court has subject matter jurisdiction over this action pursuant to 28
21 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
22 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

23 8. Pursuant to supplemental jurisdiction, an attendant and related cause of
24 action, arising from the same nucleus of operative facts and arising out of the same
25 transactions, is also brought under California’s Unruh Civil Rights Act, which act
26 expressly incorporates the Americans with Disabilities Act.

27 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is founded
28 on the fact that the real property which is the subject of this action is located in this

1 district and that Plaintiff's cause of action arose in this district.
2

3 **FACTUAL ALLEGATIONS:**

4 10. The Plaintiff went to El Chollo in May 2015 to eat.

5 11. El Chollo is a facility open to the public, a place of public accommodation,
6 and a business establishment.

7 12. Restrooms are one of the facilities, privileges and advantages specifically for
8 patrons of El Chollo.

9 13. In May 2015, the toilet stall was improperly configured and too small for
10 wheelchair users, measuring 44 inches in width and 100 inches in depth.

11 14. In May 2015, the restroom had a cabinet style sink that did not provide any
12 knee clearance for wheelchair users.

13 15. In May 2015, the restroom did not provide for a 60 inch diameter turning
14 radius.

15 16. Currently, the toilet stall was improperly configured and too small for
16 wheelchair users, measuring 44 inches in width and 100 inches in depth.

17 17. Currently, the restroom does not provide for a 60 inch diameter turning
18 radius.

19 18. Currently, the restroom was improperly configured and too small for
20 wheelchair users, measuring less than 60 inches wide by 59 inches deep.

21 19. Plaintiff would like to return to and patronize El Chollo but will be deterred
22 from visiting until the defendants cure the violations.

23 20. The defendants have failed to maintain in working and useable conditions
24 those features required to provide ready access to persons with disabilities.

25 21. The violations identified above are easily removed without much difficulty or
26 expense. They are the types of barriers identified by the Department of Justice as
27 presumably readily achievable to remove and, in fact, these barriers are readily
28 achievable to remove. Moreover, there are numerous alternative accommodations

1 that could be made to provide a greater level of access if complete removal were not
 2 achievable.

3 22. Given the obvious and blatant violation, the plaintiff alleges, on information
 4 and belief, that there are other violations and barriers on the site that relate to his
 5 disability. Plaintiff will amend the complaint, to provide proper notice regarding the
 6 scope of this lawsuit, once he conducts a site inspection. However, please be on
 7 notice that the plaintiff seeks to have all barriers related to his disability remedied.
 8 See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 9 encounters one barrier at a site, he can sue to have all barriers that relate to his
 10 disability removed regardless of whether he personally encountered them).

11 23. Plaintiff is and has been deterred from returning and patronizing El Chollo
 12 because of his knowledge of the illegal barriers that exist. Plaintiff will, nonetheless,
 13 return to El Chollo to assess ongoing compliance with the ADA and will return to
 14 patronize El Chollo as a customer once the barriers are removed.

15 24. Additionally, on information and belief, the plaintiff alleges that the failure
 16 to remove these barriers was intentional because: (1) these particular barriers are
 17 intuitive and obvious; (2) the defendants exercised control and dominion over the
 18 conditions at this location and, therefore, the lack of accessible facilities was not an
 19 “accident” because had the defendants intended any other configuration, they had
 20 the means and ability to make the change.

21

**22 I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH
 23 DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all defendants
 24 (42 U.S.C. section 12101, et seq.)

25 25. Plaintiff repleads and incorporates by reference, as if fully set forth again
 26 herein, the allegations contained in all prior paragraphs of this complaint.

27 26. Under the ADA, it is an act of discrimination to fail to ensure that the
 28 privileges, advantages, accommodations, facilities, goods and services of any place

1 of public accommodation is offered on a full and equal basis by anyone who owns,
2 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).
3 Discrimination is defined, inter alia, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices, or
5 procedures, when such modifications are necessary to afford goods,
6 services, facilities, privileges, advantages, or accommodations to
7 individuals with disabilities, unless the accommodation would work a
8 fundamental alteration of those services and facilities. 42 U.S.C. §
9 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is
11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined
12 by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix
13 “D.”
- 14 c. A failure to make alterations in such a manner that, to the maximum
15 extent feasible, the altered portions of the facility are readily
16 accessible to and usable by individuals with disabilities, including
17 individuals who use wheelchairs or to ensure that, to the maximum
18 extent feasible, the path of travel to the altered area and the
19 bathrooms, telephones, and drinking fountains serving the altered
20 area, are readily accessible to and usable by individuals with
21 disabilities. 42 U.S.C. § 12183(a)(2).
- 22 27. Where a toilet stall is provided in a restroom in existing facilities, the size and
23 arrangement of the standard toilet stall shall comply with either Fig. 30(a) (standard
24 stall) or Figure 30(b) (alternate stall). 1991 Standards § 4.17.3. A standard stall
25 must be at least 60 inches wide by 56 inches deep (if the toilet is wall mounted) or
26 59 inches deep if the toilet is floor mounted. 1991 Standards § Figure 30(a). An
27 alternate stall must meet one of two configurations: either (1) be exactly 36 inches
28 by at least 66 inches deep (if the toilet is wall mounted) or 69 inches (if the toilet is

1 floor mounted) and provide front transfer grab bars or (2) be at least 48 inches wide
2 by at least by at least 66 inches deep (if the toilet is wall mounted) or 69 inches (if
3 the toilet is floor mounted) and provide side transfer grab bars. 1991 Standards §
4 Figure 30(b).

5 28. Here, the toilet stall does not meet any option under the ADA and is in
6 violation of the law.

7 29. Sinks must provide knee clearance of at least 29 inches in height. 1991
8 Standards § 4.19.2 and Figure 31; 2010 Standards § 606.2 and 306.

9 30. Here, no such knee clearance was provided and this is a violation of the ADA.

10 31. In order for a bathroom to be considered accessible, it must provide
11 unobstructed 60 inches in diameter of turning space. 1991 Standards § 4.23.3;
12 4.2.3; 2010 Standards § 603.2.1; 304.3.1.

13 32. Here, there is no such turning radius and the restroom is not accessible.

14 33. A public accommodation must maintain in operable working condition those
15 features of its facilities and equipment that are required to be readily accessible to
16 and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

17 34. Here, the failure to ensure that the accessible facilities were available and
18 ready to be used by the plaintiff is a violation of the law.

19 35. Given El Chollo's location, roughly 10 miles from his home, and their menu,
20 which Plaintiff enjoys, Plaintiff will continue to desire to patronize the El Chollo,
21 but he has been, and will continue to be, discriminated against due to the lack of
22 accessible facilities and, therefore, seeks injunctive relief to remove these barriers
23 that violate the ADA and his right to full and equal access.

24

25 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
26 RIGHTS ACT** (On behalf of plaintiff and against all defendants) (Cal Civ § 51-53)

27 36. Plaintiff re-pleads and incorporates by reference, as if fully set forth again
28 herein, the allegations contained in all prior paragraphs of this complaint.

37. Because the defendants violated the plaintiffs' rights under the ADA, they also violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f), 52(a).)

38. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

PRAYER:

Wherefore, Plaintiff prays that this court award damages and provide relief as follows:

1. For injunctive relief, compelling defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the Plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act which damages provide for actual damages and a statutory minimum of \$4,000.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

Dated: April 18, 2016

CENTER FOR DISABILITY ACCESS

By: _____
Mark Potter, Esq.
Attorneys for Plaintiff